

SERVICE DATE – JUNE 9, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 667X)

CSX TRANSPORTATION, INC.—ABANDONMENT
EXEMPTION—IN HARLAN COUNTY, KY

Decided: June 8, 2006

CSX Transportation Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 12.56-mile rail line on its Southern Region, Huntington Division-West, Cumberland Valley Subdivision, from milepost OWH 258.5 to the end of the track at milepost OWH-271.06, in Harlan County, KY. Notice of the exemption was served and published in the Federal Register on May 11, 2006 (71 FR 27530-31). The exemption was scheduled to become effective on June 10, 2006, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by May 22, 2006.

On May 23, 2006, Pardee & Curtin Realty LLC (Pardee) late-filed a formal expression of intent to file an OFA in order to purchase the entire line. Pardee simultaneously requested that CSXT provide it with the financial data and information prescribed in 49 CFR 1152.27(a), including the minimum purchase price required to acquire the line, CSXT's most recent report on the physical condition of the line, and traffic, revenue and other data necessary to determine the line's net liquidation value (together with supporting data). Also, Pardee requested the Board to toll the time period for submitting its OFA for an additional 30 days (presumably pursuant to 49 CFR 1152.27(c)(2)(ii)(C)). Pardee states that the additional time is needed to obtain necessary information from CSXT and to have an adequate opportunity to review and analyze the data requested. On May 25, 2006, Pardee filed a request for the Board to accept its late-filed notice of intent to file its OFA. Pardee states that it had given Federal Express Company (Federal Express) specific instructions to deliver the notice of intent to the Board on Monday, May 22, 2006. According to Pardee, Federal Express attempted the delivery before office hours on that date and did not attempt a further delivery that day. Federal Express delivered the filing to the Board on May 23, 2006. Because CSXT has not objected, Pardee's late-filed notice of intent will be accepted. As a result of this filing, the effective date of the exemption will be automatically stayed until June 20, 2006. The request for an extension of the OFA filing deadline is warranted and will be granted. Accordingly, the due date for Pardee to submit an OFA will be extended to July 12, 2006, and the effective date will be extended to July 22, 2006.

On June 8, 2005, Seaside Holdings, Inc. (Seaside) also late-filed a notice of its intent to file an OFA in this proceeding. Seaside requests acceptance of its notice if the Board accepts

Pardee's notice, asserting that no party would be prejudiced and the proceeding would not be delayed. Seaside also states that CSXT has authorized it to state that CSXT does not object to the Board's acceptance of Seaside's late-filed notice of intent if Pardee's notice of intent is accepted. Under the circumstances, Seaside's notice will be accepted and its OFA will also be due on July 12, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment in this proceeding on May 16, 2006. In the EA, SEA states that the National Geodetic Survey (NGS) has identified 13 geodetic markers that may be affected by the proposed abandonment. NGS states that, if there are any planned activities that will disturb or destroy these markers, CSXT should be required to notify NGS 90 days prior to salvage activities in order to plan for the possible relocation of the markers. Therefore, SEA recommends that CSXT be required to notify NGS at least 90 days prior to beginning salvage activities so that plans can be made for the possible relocation of the geodetic station markers.

SEA also states that the Natural Resources Conservation Service (NRCS) commented that the proposed abandonment would not impact prime or unique farmland, or farmland of statewide significance and associated wetlands. However, NRCS noted that disturbed areas would need to be seeded and mulched immediately after work is completed to reduce the potential for erosion. This issue is typically addressed in the Construction General Stormwater Permit issued by the U.S. Environmental Protection Agency (USEPA). SEA further states that CSXT indicated that, in February 1987, a hazardous material spill occurred near Glenbrook, KY (milepost 266.6). The incident, initiated by a rock slide, caused approximately 500 gallons of diesel fuel to leak over a twenty-five mile segment of track. CSXT indicated that an environmental cleanup was not feasible, but has not provided any further information. Additionally, SEA states that the USEPA has not commented on the proposed abandonment. Therefore, SEA recommends that, prior to commencement of any salvage activities, CSXT be required to: (a) consult with USEPA to ensure that any concerns regarding potential contamination of the right-of-way and applicable stormwater management and sediment control requirements are addressed and report the results of its consultation in writing to SEA; (b) consult with USEPA to ensure appropriate consideration of the National Pollutant Discharge Elimination System (NPDES) requirements; and (c) comply with the reasonable NPDES requirements.

In the EA, SEA noted that CSXT had served its environmental report on a number of other appropriate Federal, state and local agencies, but none has responded. Based on the limited information available, SEA stated that it could not fully determine if salvage activities would cause significant environmental impact on the area surrounding the proposed abandonment. SEA, therefore, provided a copy of the EA to the following agencies for review and comment: U.S. Fish and Wildlife Service (USFWS), USEPA, and the National Park Service (NPS), and recommended that CSXT consult with the above-reference agencies, as necessary prior to commencement of any salvage activities. The specific conditions recommended by SEA in the

EA are that, prior to commencement of any salvage activities, CSXT be required to consult with: (1) the USFWS regarding potential impacts from salvaging activities to the Federally listed threatened and endangered species that may occur in the vicinity of the line and report the results of these consultation in writing to SEA; and (2) the NPS Southwest Region and the Kentucky Department of Parks, regarding any impacts on wildlife sanctuaries, refuges, National or state Parks or forest, and report the results of these consultations in writing to SEA.

Finally, SEA states in the EA that the Kentucky Heritage Council State Historic Preservation Office (SHPO) has not yet submitted comments in response to the historic report. Accordingly, SEA recommends that CSXT be required to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or listed in the National Register of Historic Places (National Register) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). SEA also noted that it conducted a search of NPS's Native American Consultation Database (Database)¹ to identify Federally recognized tribes that may have an interest in the project. SEA further stated that, according to the Database, the Delaware Nation, the Eastern Band of Cherokee Indians, the Miami Tribe of Oklahoma, and the Peoria Tribe of Indians of Oklahoma may have an interest in the proposed abandonment. SEA stated that it would ensure that the tribes receive a copy of the EA for review and comment, and recommended that, in the event any archaeological sites, human remains, funerary items or associated artifacts are discovered during the salvage activities, CSXT be required immediately to cease all work and notify SEA, interested Federally recognized tribes, and the SHPO, after which SEA will consult with CSXT and the parties mentioned above to determine whether any mitigation measures are necessary.

Comments to the EA were due June 1, 2006. SEA states that the Peoria Tribe (Tribe) commented that it does not object to the proposed abandonment because it is not aware of any documentation directly linking Indian Religious Sites to the proposed activity. However, the tribe urged that, in the event any human skeletal remains and/or any objects falling under the Native American Graves Protection and Repatriation Act are discovered during salvage activities, all work cease immediately, pending notification and consultation with Federal, state and local officials. Therefore, SEA states that the recommendation in the EA pertaining to archeological sites, human remains, and artifacts should remain unchanged.

Based on SEA's recommendations, the environmental conditions recommended in the EA will be imposed. This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ See National Park Service Native American Consultation Database at <http://cast.work.edu/other/nps/nard/>.

It is ordered:

1. This proceeding is reopened.
2. Pardee's late-filed notice of intent to file an OFA is accepted.
3. Seaside's late-filed notice of intent to file an OFA is accepted.
4. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that CSXT: (1) notify NGS at least 90 days prior to salvage activities so that plans can be made for the relocation of the geodetic station markers; (2) prior to commencement of any salvage activities, (a) consult with USEPA to ensure that any concerns regarding potential contamination of the right-of-way and applicable stormwater management and sediment control requirements are addressed, and report the results of these consultations in writing to SEA; (b) consult with USEPA to ensure appropriate consideration of the NPDES requirements; and (c) comply with the reasonable NPDES requirements; (3) prior to commencement of any salvage activities, consult with the USFWS regarding potential impacts from salvage activities to Federally listed threatened and endangered species that may occur in the vicinity of the line, and report the results of these consultations in writing to SEA; (4) prior to commencement of any salvage activities, consult with the NPS Southeast Region and the Kentucky Department of Parks regarding any impacts on wildlife sanctuaries, refuges, National or state parks or forest, and report the results of these consultations in writing to SEA; and (5) (a) shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or listed in the National Register until completion of the section 106 process of the NHPA;² and (b) that, in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CSXT immediately cease all work and notify SEA, interested Federally recognized tribes, and the SHPO, after which SEA will consult with the SHPO, interested Federally recognized tribes, and CSXT to determine whether any mitigation measures are necessary.
5. The time for offerors to file an offer of financial assistance is tolled until July 12, 2006, and the effective date of the exemption is further postponed until July 22, 2006.

2 As noted by SEA in the EA, CSXT may not file its consummation notice or initiate any salvage activities related to the abandonment until the section 106 process has been completed and the Board has removed the section 106 condition.

6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary